IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5686 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Labour Judge and Industrial Member ? :

NALINKUMAR A THAKAR

Versus

GUJARAT STAE CIVIL SUPPLIES CORPORTION LTD

Appearance:

1. Special Civil Application No. 5686 of 1991

MR DC RAVAL for

MR MR ANAND for Petitioners

MR KM PATEL for Respondent No. 1

NOTICE SERVED for Respondent No. 2-5

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/04/2002

ORAL JUDGEMENT

What is obvious is always known and what is known is not

always present.

... John
Preface Dictionary.

1. Heard the learned counsel for the petitioner Mr. D.C. Raval for Mr. M.R.Anand Sr. Advocate, for the petitioner and Mr. K.M. Patel, learned advocate on behalf the respondent.

2. In the present case, the petitioners have challenged the order of termination passed by the respondent with a prayer to reinstate them with all consequential benefits along with back wages for the interim period. This Court has issued the rule on 6-12-1991 and the following order has been passed :

> "Rule. Interim relief restraining the respondents from confirming the persons mentioned in paragraphs 4 and 5 of the petition and directing the respondent to give preference to petitioners as and when temporary and adhoc appointments are to be made to the post in question. It is also directed that the petitioners will be considered for the post in question for regular appointments if and when regular vacancies arise in accordance with the rules and regulations applicable to the post in question. Liberty to the petitioners to join persons named in paragraphs 4 and 5 as party respondents."

3. The respondent has filed the affidavit-in-reply on 3-8-2000. Against that the rejoinder has been filed by the petitioner on 29-6-2001 and the additional affidavit-in-reply has been filed by the respondent on27-12-2001. Thereafter, additional rejoinder has been filed by the petitioner on 20-3-2002.

4. The case of the petitioners is that the respondent Corporation is the State authority and services of the petitioners have been terminated while continuing the juniors. All the petitioners started their services in May, 1990 by the orders dated 4-5-1990. The appointments orders were issued in favour of the petitioners on temporary basis and for the fixed period. They have been continued by the periodical orders of extension of service. The services of the petitioners were terminated on 23-11-1990 on the ground that their services are not needed. The services of the petitioners were terminated without any notice and without giving any

opportunity of being heard to the petitioners. The nature of the work which was performed by the petitioners as delivery boy/packers. They have to fill the patrol in the vehicles coming to the patrol pump of the respondent. Their services were terminated without giving any reason in the termination order and without any justification by the respondent whether the juniors to the petitioners were continued in service even subsequently new employees on the same terms were employed on the same place of the respondent. According to the petitioners, Kishanbhai H. Solanki was recruited on 4-10-1990 and one Karshanbhai S. Vankar was recruited on 12-11-1990. Both these persons are continued when the services of the petitioners were terminated by the respondents. According to the petitioners, they are very hard workers and many times they were working upto 15/16 hours every day and still they are treated in this fashion and discriminated against the appointment order of Kishanbhai H. Solanki and Karshanbhai S. Vanker. The appointment orders of these persons will be produced by the petitioners at the time of hearing of the petition. According to the petitioners, they made a representation to the higher authority against the said termination. Meanwhile, one Hareshkumar Natvarlal Parekh was appointed in the petitioners' post by the order dated 3-12-1990. Not only that one Bipinkumar D. Bhatt has been recruited on 16-7-1991. These all persons were directly recruited identically in the same manner as the petitioners were recruited by the respondent. Last person Shri Bhatt was even age bar but he was taken up while continuing the services of the petitioners and keeping silence about the representation of the petitioners. According to the petitioners, the order of termination is illegal, unconstitutional and null and void. The order of termination is arbitrary and violative of Articles 14 and 16 of the Constitution of India on the ground of discrimination and malafide and the respondents have continued the juniors to the petitioners and their recruitment is made in the same manner and in the place of the petitioners. According to the petitioners, so far as one Kishanbhai Solanki is concerned, his only qualification was that he was working at the residence of the Chief Managing Director Shri Jagdishan. The petitioners are sacrificed by a public sector unit to satisfy the personal needs and whims of the Managing Director. The order of termination is contrary to the principles of natural justice which resulted into hardships and livelihood of the petitioners and it amounts to gross abuse of powers by the State authority. Therefore, the prayer is made to quash and set aside the order of termination and grant all the benefits as if the

termination order is never passed with all back wages of interim period.

5. Annexure - A is the appointment order issued favour of the petitioner wherein it is mentioned that the petitioner was appointed on the basis of 29 days fixed salary on daily rated basis and his services can be terminated at any time without any reason.

6. Annexure-B is the order of the petitioner on the same terms and Annexure-C is also the appointment order in favour of the petitioner in the same term. Page 15 is the order of termination of one Shri N.R. Thakar. Identical orders 23-11-1990 have been issued in favour of other petitioners which are at Page 16 and 17. The appointment order of the petitioners is dated 4-5-1990. Therefore, the petitioners were working continuously with the respondent from 4-5-1990 to 23-11-1990 in the prescribed scale. Page 18 Annexure-C is the representation of the petitioners wherein the petitioners were appointed with Kishanbhai H. Solanki and Karshanbhai S. Vanker and both these persons were appointed on 4-10-1990 and 12-11-1990 and they are continued with the respondent. According to the petitioners, the said representation remained unanswered and without any response from the respondent.
7 The affidavit-in-reply has filed by the respondent, wherein it is averred that the petitioners were appointed as packers/delivery boy on purely temporary basis and all the petitioners have worked for less than six months. Their appointments were made without following procedure for selection required to be followed for making permanent appointment. The petitioners have no right to continue in service as their disengagement from service is with effect from 23-11-1990. Therefore, the termination order is not in any way illegal or unjustified. The appointment in favour of Kishanbhai S. Vankar, Karshanbhai S. Vanker, Hareshkumar N. Parekh and Bipinbhai D. Bhatt subsequent to termination of the petitioners does not vitiate the action of the respondent in not renewing the term of the employment of the petitioners. According to the respondent, no discriminatory treatment has been given to the petitioners and the order of termination is not arbitrary or violative of Article 14 and 16 of the Constitution of India.

8. In the rejoinder of the petitioners, they have narrated almost the same facts which were narrated in the petition. Therefore, it is not necessary to refer to the same averments which were made in the petition. It is

necessary to note that five persons K.B. Girnar, M.K. Acharya, J.R. Thaker, Parmabhai B. Patel and Haresh P. Thakkar were made permanent in the same post by the respondent on 19-6-1991, 11-7-1991, 11-7-1991, 16-2-1993 and 3-4-1993 respectively.

9. The respondent has filed additional affidavit-in-reply wherein it is mentioned by the respondent that the petitioners has no right to hold substantive post. So far as the case of Kishanbhai H. Solanki, he was made permanent on 14-6-1991 prior to passing of the interim order by this Court. It is not correct and therefore denied that Hareshkumar N. Parekh and Bipinkumar D. Bhatt were appointed in place of the petitioners. The petitioners were appointed due to exigency of the work on 4-5-1990 because some of the employees working on the patrol pump were placed under suspension and in order to ensure that that the work does not suffer, the petitioners came to be employed as temporary employees. The petitioners were relieved by the order dated 23-11-1990 and they had put hardly about six months' service. If the temporary employees working with the respondent on different establishment and are continued, it does not confer any right on the petitioners to continue in service.

10. Thereafter, the petitioners have filed additional rejoinder pointing out that Kishanbhai H. Solanki was recruited on 4-10-1990 and Karshnabhai S. Vanker was recruited on 12-11-1990 prior to termination of the petitioners as daily wages. Both these persons are juniors to the petitioners were working as daily rated employees when the services of the petitioners were terminated and they were continued in service on the same terms and on the same post. Shri Hareshkumar N. Parekh was appointed on 3-12-1990 on the same post which was holding by the petitioners. Shri Bipinbhai D. Bhatt was appointed on 16-7-1991 on the same terms subsequent to the termination of the petitioners. Both these persons were appointed as delivery boy/packers on the same terms for which the petitioners were working with the respondent. Along with the additional rejoinder, the petitioners have produced the appointment order of Kishankuamr H. Solanki dated 4-10-1990 wherein it is mentioned that he was appointed as daily rated employee at patrol pump at Gandhinagar on the same terms as the petitioners were appointed. Second order dated 12-11-1990 Karshan S. Vanker who was appointed as daily rated employee at patrol pump at Gandhinagar on the post of packers/delivery boy on the same terms which were applied to the petitioners. Third order is respect of

Shri Hareshkumar N. Parekh who was appointed on 3-12-1990 as daily rated at the patrol pump, at Gandhinagar. The fourth order is of Mr. Bipinbhai D. Bhatt dated 16-7-1991 who was appointed as adhoc employee at the patrol pump at Gandhinagar.

11. Learned counsel for the petitioners Mr. Raval on the basis of this factual aspect which has been narrated in the petition, replies and rejoinders submitted that it is an undisputed situation that two junior persons were continued at the time of termination of the petitioners and no reasons have been given by the respondents at the time of termination of the petitioners and no reasons have been incorporated in the order of termination. In the termination it is only mentioned that the petitioners' services are not required or needed by the respondents. During the services of the petitioners, the junior persons were appointed and they remained continue with the respondent and subsequently they were confirmed by the respondent. Therefore, it is clear case of discrimination, arbitrariness and Article 14 and 16 of the Constitution of India which is having mandate against the State Authority to act in any just, right and fair manner and not in arbitrary manner. He also submitted that in para 5 of the rejoinder the names of such persons have been given by the petitioners at page 23. He also submitted that all these junior persons were subsequently appointed on the same post at patrol pump at Gandhinagar. Therefore, he submitted that the respondent has given reason for appointment of the petitioners that because of suspension of some workmen they require the work and therefore and therefore the petitioners were appointed. Similarly, no reason has been given by the respondent while terminating the services of the petitioners. He also submitted that it is a burden upon the respondent to justify the termination of the petitioners when challenge to the termination of the petitioners is made by the petitioners on the ground of discrimination, arbitrariness, malafide, the respondent should have disclosed the correct reason before this Court. But in the reply as well as the additional reply, respondents have not given any reason or any justification for terminating the services of the petitioners which hit by Article 14 of the Constitution of India.

12. He also submitted that the principle of last come first go is also violated by the respondent and therefore also termination of the petitioners is also illegal and contrary to Article 14 and 16 of the Constitution of India and therefore the same is required to be quashed and set aside. He relied on certain decisions of the

Apex Court as well as this Court, which are as under :

i. In the case of the Manager, Govt. Branch Press and Another V. D.B. Belliappa, reported AIR 1979 SUPREME COURT 429, para 23-24.

ii. In the case of Harijan Govind Jadav Vs. The State of Gujarat & Others, reported in 1987 G.L.H. 200, para 2 and 3.

iii. In the case of Patel Ashokkumar Babulal Vs. State of Gujarat, reported 1996 (2) G.L.R. 535, (para 9).

iv. In the case of Lashiben Amitji Vs. O.N.G.C. and others, reported in 2002 (4) G.L.R.3372, Head Note. B & pr.15.

v. In the case of Surendranagar District Panchayat Employees Union and Others Vs. Surendranagar District Panchayat through the Secretary and others, reported in 1988 (2) G.L.H. UJ 15, principle of last come, first go, has been examined by this Court.

vi. In the case of Rajkot Municipal Corporation Vs. Kishor Govind reported in 1996 (1) GCD 281.

13. Learned Advocate Mr. K.M. Patel appearing on behalf of the respondent submitted that the appointments of the petitioners were not after selection and after following the regular procedure of recruitment. He also submitted that the appointments were conditional for prescribed period for 29 days and as per the said conditions services of the petitioners were terminated by the respondent. The petitioners were daily rated employees as required to be appointed just to meet with the exigency occurred due to suspension of some of the employees working at different patrol pumps. Duration of the service of the petitioners is less than six months. He also submitted that the names of the persons mentioned in para 5 of the affidavit-in-rejoinder and the said five persons are not covered by the interim order passed by this Court. He also submitted that the petitioners were daily rated and were appointed on periodical basis and hence they have no legal right to remain continue in the post in question and it was not the case of retrenchment as none of the petitioners have completed 240 days within

a period of 12 months.

14. He also submitted that the seniority of such employees is not kept and it is very difficult to maintain seniority of temporary employees because they were appointed in the entire Gujarat on various establishments. He also submitted that none of the provisions of the Industrial Disputes Act, 1947 has been violated by the respondent. he also submitted that there is no discrimination or arbitrariness in exercise of the powers by the respondent as daily rated employees have no legal right to remain in service. He has relied on the decision in the case of Himanshu Kumar Vidyarthi and others V. State of Bihar and others, reported in AIR 1997 SC 3657. He also relied on the decision of the Apex Court in the case of Ratan Singh V. Union of India and Another, reported in 1997 (II) SCC 396

15. He also relied on the decision of the Apex Court in the case of Ashwani Kumar and others V. State of Bihar and others, reported in AIR 1997 SC 1628 Head Note-B.

16. He also relied on the decision of the Apex Court in the case of Chandigarh Administration and another Vs. Jagjit Singh and another, reported in AIR 1995 SC 705 para 8 and AIR 1980 SC 2054.

17. In the decision of the Supreme Court in the case of Birla VXL Ltd. Vs. State of Punjab and Others, reported in AIR 1998 SCW 3899.

18. I have considered the submissions made by learned both the advocates and also authorities which are cited by both the advocates.

19. The question to be examined by this Court is legality and validity of termination order which has been passed by the respondent; whether the respondent has acted in arbitrary manner, discriminatory, colourable exercise of power, mala fide or not and whether the respondent has justified the termination of the petitioners or not.

20. Most of the facts which are mentioned in the petition, affidavit-in-reply and rejoinder are not in dispute. The date of appointment of the petitioners, date of termination of the petitioners and date of appointment of juniors to the petitioners and confirmation of the persons those who were subsequently appointed, are not in dispute between the parties. It is

also not in dispute that two persons namely Kishanbhai H. Solanki who was recruited on 4-10-1990 and Karshanbhai S. Vankar was recruited on 12-11-1990 during the tenure of the petitioners and they were continued at the time of termination of the petitioners. It is not the case of the respondent that their services were also terminated along with the petitioners. It is also not in dispute that Hareshkumar N. Parekh was appointed on 3-12-1990 and Bipinbhai D. Bhatt was appointed on 16-7-1991 on the same post for the same work, same terms and in the same pay scale as well as at the same place. Therefore, one question arises that what is the justification with the respondent to terminate the services of the petitioners while retaining aforesaid junior persons and subsequently fresh hands means new persons were recruited in the place of the petitioners. One thing is very clear that the nature of the work which was being performed by the petitioners was permanent in nature. The petitioners were not appointed to any specific work nor they were appointed on any specific project. Initially, the petitioners were appointed on the basis of 29 days. Thereafter, no order of extension has been produced by the respondent because no such extension was given but they were remained in service upto 23-11-1990. In the impugned termination orders no reasons have been given by the respondent and in the two replies filed by the respondent, the respondent is not able to justify the termination order of the petitioners. It is the duty of the respondent being a State Authority when their action is under challenge, they shall have to justify the termination orders of the petitioners as to why the services of the petitioners were terminated by the respondents while continuing the juniors to the petitioners working on the same post and same place. Therefore, apparently the termination of the petitioners amounts to discrimination, arbitrariness and colourable exercise of powers. Absence of the reasons and justification by the respondent this Court is having no option except to believe the fact that the respondent remained silent behind the back of the petitioners which has become foundation to terminate the services of the petitioners. But the real reasons have not been disclosed by the respondent that clear intention that they have to face other consequences. Therefore, the respondent remained silent about the reasons and justification of termination of the petitioners purposely and not disclosed any reason for termination of the petitioners. The respondent has disclosed the reason for appointment of the petitioners that because some of the persons were suspended by the respondents working on the same post which required appointment of the petitioners.

If the appointment of the petitioner has been justified but the termination of the petitioners is not justified by disclosing the reasons by the respondents. Therefore, something has been concealed by the respondent from the Court not to disclose the reason to the Court that terminating the services of the petitioners. Article 14 and 16 of the Constitution are applicable to the case of temporary employees or daily rated employees if their services are terminated without any reason and without any justification while continuing the juniors in service on the same post and same place and subsequently the new persons have been recruited in the same post and same place and same terms.

21. Therefore, considering this aspect the matter requires to be considered on some of the observations made by the Apex Court and various High Courts.

(i) In the case of M.S. Grewal and Another Vs. Deepchand Sood And others, reported in 2001 (8) Supreme Court cases 151, wherein it has been observed as under :

"Para 27 : The decision of this Court in D.K. Basu Vs. State of W.B. comes next. This decision has opened up a new vista in the jurisprudence of the country. The old doctrine of only relegating the aggrieved to the remedies available in the civil law limits stands extended since Anand, J. (as His Lordship then was) in no uncertain terms observed : SCC p. 439, para 45)

"The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim - civil action for damages is a long-drawn and a cumbersome judicial process. Monetary compensation for redressal by the Court finding the infringement of the indefeasible right to life of the citizen, is therefore, useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family."

(para 28 - Currently judicial attitude has taken a shift from the old draconian concept and the traditional jurisprudential system

affectation of the people has been taken note of rather serious and the judicial concern thus stands on a footing to provide expeditious relief to an individual when needed rather than taking recourse to the old conservative doctrine of the civil court's obligation to award damages. As a matter of fact the decision in D.K. Basu has not only dealt with the issue in a manner apposite to the social need of the country but the learned Judge with his usual felicity of expression firmly established the current trend of "justice-oriented approach". Law courts will lose their efficacy if they cannot possibly respond to the need of the society technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

(ii) Rajkot Municipal Corporation Vs. Kishor Govind reported in 1996 (1) GCD 281 (Guj), wherein it has been observed as under :

"The Scheme envisage that the provisions of section 25C to 25F applies only to the establishments mentioned in section 25A and not to every industry generally falling under section 2 (j) of the Act. However, sections 25F, 25G and 25H are not hit by section 25A. Therefore, the provisions of Section 25B, 25F, 25G and 25H of the Act are applicable to every establishment to which the provisions of the Industrial Disputes Act apply. section 25B merely defines what is meant by continuous service for the period for the purpose of Chapter VA of the Act, that is to say, wherever the word 'continuous' service appear in grants certain protection to those workman against unceremonious termination of service who have been in continuous service for not less than one year. In such cases, where workman has completed continuous service for only year or more in terms of section 25B is given matching order, he has to be served with one month's notice in writing indicating reasons for retrenchment and in case such notice is not given, then he has to be paid wages for the period of notice in lieu thereof. In addition thereto, the workman has to be paid retrenchment compensation at the time of retrenchment equivalent to 15 days average pay for each completed year of continuous service. Section

25G provides that retrenchment should follow ordinarily last come first go rule, that is to say, ordinarily, junior most person in the category of the workman who is sought to be retrenched must go before the senior is asked to go unless there are specific reasons for deviating from the rule and such reasons are to be recorded in writing. Section 25H is post retrenchment relief envisaged in the matter of re-employment where the employer proposes to take into his employment any person after retrenchment he has to off such employment first to the retrenched workman and if such offer being made, the workman offers himself for employment, then, he shall have preference for re-employment."

(iii) In the case of Patel Ashokkumar Babulal Vs. State of Gujarat, reported in 1996 (2) G.L.R. 535, wherein it has been held as under :

"The submission that in view of the principle of first come last go or last come first go necessary direction should be given to the respondents to continue the petitioners in service as ad hoc Lecturers cannot be accepted in the facts of the case. It is true that the ambit and reach of Arts, 14 and 15 are not limited to cases where the public servant affected has a right to a post. Even if a public servant is in an officiating position, he can complain of violation of Arts. 14 and 16 if he has been arbitrarily or unfairly treated or subjected to mala fide exercise of power by the State machine. Even an ad hoc appointment is an appointment to an office, howsoever tenuous its character may be. Such ad hoc appointment authorities the appointee (1) to occupy the post (2) to perform the functions and discharge the duties and (3) to draw emoluments attached to the post. The Government can make short term appointments, even against permanent posts to meet its immediate requirements pending regular appointments to a post. But having once made such appointments, the concerned authority cannot dispense with services of such temporary ad hoc employees at any time even when the need for filling up the posts on a temporary ad hoc basis still persists. It is well settled that if services of an ad hoc employee are terminated retaining his juniors in service then such termination of services would be in violation of Arts. 14 and 16 of the

Constitution (See Jarnail Singh and Ors. Vs. State of Punjab. UJ 1986 (2) (SC) 235). Therefore, there is no doubt that principle first come last go or last come first go will also be applicable in case of ad-hoc employees."

(iv) In the case of Harijan Govind Jadav Vs. The State of Gujarat & Others, reported in 1987 G.L.H. 200, wherein it has been held as under :

"Para 2 : In the facts and circumstances of the case, it is not necessary to go into any other contention except one, namely that the petitioner's services have been terminated while his juniors are retained in service. This fact is not controverted by the the respondents. On the contrary, in paragraph 6 of the affidavit-in-reply it is admitted that juniors to the petitioner are continued in service. It is contended that on that ground there is no discrimination because "every individual is enlisted on probation of two years and each case has to be judged separately." The contention raised by the respondents that the petitioner is employed on probation for a period of two years is not fortified by the record. The appointment order Annexure-B already shows that the petitioner was on temporary basis. There is nothing in the order to indicate that his appointment was on probation for two years. The learned counsel for the respondents relied upon the provisions of Rule 70 (6) of the Gujarat Police Manual. The relevant part of the said rule indicated that in case of Head constables and constables appointment will be made on probation for two years. It is true that the aforesaid provision of the Gujarat Police Manual enables the authority to make appointment of constables on probation for a period of two years. But it does not mean that each and every appointment of constable or head constable is always on probation for a period of two years. In the instant case, the order of appointment does not show that the appointment of the petitioner was on probation for a period of two years. It is very clear that the petitioner was appointed on temporary basis. Therefore, the petitioner's services could not have been terminated while retaining his juniors in service.

para 3 : In such type of cases the respondent authorities ought to have believed the provisions of Rule 69 of the Gujarat Police Manual. Clause (3) of Rule 89 clearly, provides that temporary Government servants may "be discharged from service if necessary, in strict order of juniors and no person should be arbitrarily discharged, without regard to the seniority." In view of this provision of the rule it is clear that the action of the respondent authorities in terminating the services of the petitioner is against the aforesaid rule and it is clearly arbitrary action which violates Article 14 of the Constitution of India. There is no satisfactory explanation for adopting such an arbitrary course of action.

(v) In the case of The Manager, Govt. Branch Press and another, V. D.B. Belliappa, reported in AIR 1979 SUPREME COURT 429, wherein it has been held as under :

"para 23 - In the view we take, we are further fortified by a decision of the Constitution Bench in Champak Lal's case (AIR 1964 Sc 1954) (supra). That was a case of la temporary Government servant. Rule 5 governing a temporary Government servant, which came up for consideration in that case, gave power to the Government to terminate the service of a temporary Government servant by giving him one month's notice or on payment of one month's pay in lieu of notice. This rule was attacked on the ground that it was hit by Article 16. In the alternative it was urged that even if rule 5 is good, the order by which the appellant's services were dispensed with, was bad because it was discriminatory. Reference was made to a number of persons whose services were not dispensed with, even though they were junior to the appellant and did not have as good qualifications as he had. Wanchoo J. (as he then was), speaking for the Court, replied the alternative argument in these terms (at p. 1860).

"we are of opinion that there is no force in this contention. This is not a case where services of a temporary employee are being retrenched because of the abolition of a post. In such a case, a question may arise as to who should be retrenched when one out of several temporary posts is being retrenched in an office. In those circumstances,

qualifications and length of service of those holding similar temporary posts may be relevant in considering whether the retrenchment of a particular employee was as a result of discrimination. The present however is a case where the appellant's services were terminated because his work was found to be unsatisfactory. (In such a case) there can, in our opinion, be no question of any discrimination. It would be absurd to say that if the service of one temporary servant is terminated on the ground of unsatisfactory conduct the services of all similar employees must also bel terminated along with him irrespective of what their conduct is. Therefore even though some of those mentioned in the plaint by the appellant were junior to him and did not have as good qualifications as he had and were retained in service, it does not follow that the action taken against the appellant terminating his services was discriminatory, for that action was taken on the basis of his unsatisfactory conduct. A question of discrimination may arise in a case of retrenchment on account of abolition of one of several temporary posts of the same kind in one office but can in our opinion never arise in the case of dispensing with the services of a particular temporary employee on account of his conduct being unsatisfactory." (Parenthesis and emphasis supplied.)

The principle that can be deduced from the above analysis is that if the services of a temporary Government servant are terminated in accordance with the conditions of his service on the ground of unsatisfactory conduct or his unsuitability for the job and/or for his work being unsatisfactory or for a like reason which marks him off a class apart from other temporary servants who have been retained in service, there is no question of the applicability of Article 16."

"para 24 - Conversely, if the services of a temporary government servant are terminated, arbitrarily, and not on the ground of his unsuitability, unsatisfactory conduct or the like which would put him in a class apart from his juniors in the same service, a question of unfair discrimination may arise notwithstanding the fact that in terminating his service, the appointing

authority was purporting to act in accordance with the terms of the employment. Where a charge of unfair discrimination is levelled with specificity, or improper motives are imputed to the authority making the impugned order of termination of the service, it is the duty of the authority to dispel that charge by disclosing to the Court the reason or motive which implied it to take the impugned action. Exercising perhaps, in cases analogous to those covered by Article 311 (2), Proviso (c) the authority cannot withhold such information from the Court on the lame excuse, that the impugned order is purely administrative and not judicial, having been passed in exercise of its administrative discretion under the rules governing the conditions of the service. "The giving of reasons", as Lord Denning put it in Breen V. Amalgamated Engineering Union (1971) 1 AII ER 1148 "is one of the fundamentals of good administration" and to recall the words of this Court in Khudi Ram V.State of West Bengal (1975) 2 SCR 832 at p. 845 : AIR 1975 SC 550 at pg 558) in a Government of laws "there is nothing like unfettered discretion immune from judicial reviewability". The executive, no less than the judiciary, is under a general duty to act fairly. Indeed, fairness founded on reason is the essence of the guarantee epitomised in Artis. 14l & 16 (1).

"Para 25 - Another facet of Mr. Veerappa's contention is that the respondent had voluntarily entered into a contract of service on the terms of employment offered to him. One of the terms of that contract, embodied in the letter of his appointment is that his service was purely temporary and was liable to termination at the will and pleasure of the appointing authority. Having willingly accepted the employment on terms offered to him, the respondent cannot complaint against the impugned action taken in accordance with those mutually agreed terms. The argument is wholly misconceived. It is borrowed from the archaic common law concept that employment was a matter between the master and servant only. In the first place, this rule in its original absolute form is not applicable to Government servants. Secondly, even with regard to private employment, much of it has been passed into the fossils of time. "This rule held the field at

> the time when the master and servant were taken more literally than they are now and when, as in early Roman Law, the rights of the servant, like the rights of any other member of the house-hold, were not his own but those of his patter families" The overtones of this ancient doctrine are discernible in the Anglo-American jurisprudence of the 18th century and the first half of the 20th century, which rationalised the employer's absolute right to discharge the employee. "Such a philosophy", as pointed out by K.K. Mathew J. (vide his treatise "Democracy, Equality and Freedom", page 326) of the employer's dominion over his employee may have been in tune with the rustic simplicity of bygone days. But that philosophy is incompatible with these days of large impersonal, corporate employees." To bring it in tune with vastly changed and changing socio-economic conditions and mores of the day, much of this old, antiquated and unjust doctrine has been eroded by judicial decisions and legislation, particularly in its application to persons in public employment, to whom the constitutional protection of Article 14, 15, 16 and 311 is available.The agreement is therefore overruled."

The decisions which have been cited by the learned Advocate Mr. K.M. Patel in the case of Ashwani Kumar and others V. State of Bihar and others, reported in AIR 1997 SUPREME COURT 1628. The said decision is not applicable to the facts of the present case. In the present case, no prayer has been made by the petitioners about regularisation of their services in respect of the condition that they were not appointed by selection procedure cannot be considered to be illegal entry in the service and such appointment cannot be considered to be back door entry because when the petitioners were appointed on the post in question the posts found to be vacant because of suspension of some of the persons working on the same post. The temporary or daily rated employee if he is appointed by the employer, he is considered to be legal entry in the service of the employer. Such entry cannot be treated to be illegal though it may be contrary to the Recruitment Rules because the appointment order has been issued by the employer knowing fully well that they are appointing the employees violating the Recruitment Rules then in such situation, they are estopped to raise such contention that the appointment is bad in law and contrary to the Recruitment Rules. Therefore, the entry of the

petitioner in service is legal and valid and it cannot be said to be illegal because it was not made as per recruitment procedure. Therefore, this decision is not applicable to the facts of the present case.

(vi) In the case of Ratan Singh V. Union of India and Another, reported in 1997 (11) SCC 396, learned Advocate Mr. Patel relied upon this decision and contended that if the termination is bias and illegal, then compensation can be awarded to such employees when no post is in existence with the respondent Corporation. This decision is also not applicable to the facts of the present case when the juniors to the petitioners were continued. Not only that, they were confirmed subsequently. Compensation to the petitioners is not proper remedy when the juniors to the petitioners were made confirmed.

(vii) In the case of Himanshu Kumar Vidyarthi and others V. State of Bihar and others, reported in AIR 1997 SUPREME COURT 3657. Mr. Patel learned Advocate for the respondent relied on this decision on the basis of the fact that the Apex Court has considered that the temporary employee working on daily wages and their disengagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act, 1947. The concept of "retrenchment" therefore cannot be stretched to such an extent as to cover these employees. Since they are daily wage employees they have no right to the posts, their disengagement is not arbitrary.

(viii) In case of Birla VXL Ltd. Vs. State of Punjab and Others, reported in 1998 AIR SCW 3899. Mr. Patel learned Advocate for the respondent has relied on this decision on the ground that termination of services of the petitioners was not a termination simpliciter in terms of the appointment order, but was retrenchment brought about as a punishment. This decision is also not applicable to the facts of the present case because in the present case the services of the petitioners were terminated not according to the period specified in the appointment order because only one order has been issued in favour of the petitioners for 29 days. Thereafter, no other order has been given or issued by the respondent in favour of the petitioners or their services were not extended by any other separate order and no such averment has been made in the reply by the respondent and no such also has also been produced by the respondent on the record of this case. Therefore, the appointment of the petitioners initially was for 29 days only but subsequently their services were continued till termination. Therefore, the facts of the present case

are not covered by the aforesaid decision as in the present case termination is not on completion of the period which is mentioned in the appointment order.

(ix) Mr. K.M. Patel learned advocate for the respondent has relied on the case of Satyanarayan Sharma and others Vs. National Mineral Development Corporation Ltd. and others reported in AIR 1990 SUPREME COURT 2054. But this decision is also not applicable to the facts of the present case because in that case there was a question of regularisation of daily rated workers and absence of vacancies for absorption and they were for quite some time continued rolls and paid in spite of absence of work- Direction of absorption- cannot be given.

(x) Mr. K.M. Patel learned advocate for the respondent has also relied upon the decision of the Supreme Court in the case of Chandigarh Administration and another Vs. Jagjit Singh and another, reported in AIR 1995 SUPREME COURT 705 wherein the question about termination has been examined by the Apex Court Particular order passed by the authority in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner. Illegal and unwarranted order passed by the authority Does not entitle the High Court to repeat that illegally over again and again - Such orders of the authority cannot be treated as precedents. This decision is also not applicable to the present case only on the ground that the order passed by the respondent in favour of the juniors and in favour of the persons those who were subsequently appointed they were illegally appointed by the respondent it is not the case of the respondent that their appointments were illegal. On the contrary, all the workmen those who were juniors to the petitioners and subsequently appointed to the termination of the petitioners, are continued in service and they are made permanent by the respondent. Therefore, when it was not the case of the respondent that earlier order of appointment in favour of the juniors and subsequent termination is not illegal and therefore this decision is not applicable to the present case.

22. I have considered the decisions cited by both the learned counsel for the parties. Before I observe anything on merits, it is necessary to consider the observations made by the Apex Court in the case of Ajay Hasia Y. Khalid reported in AIR 1981 SC l487. He claims under Article 14 was formulated thus :

"The true scope and ambit of Article 14 has been the subject matter of numerous decisions. It is sufficient to state that the content and reach of Article 14 must not be confused with the doctrine of classification. Unfortunately, in the early stages of the evolution of our constitutional law. Article 14 came to be identified with the doctrine of classification because the view taken was that Article forbids discrimination and there would be no discrimination where classification making the differentia (sic) fulfils two conditions, namely, (i) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from other left out of the group; and (ii) that the differentia has a rational relation to the object sought to be achieved by the impugned legislature or executive action. It was for the first time in E.P. Royappa V. State of Tamil Nadu that this Court laid bare a new dimension of Article 14 and pointed out that that Article has highly activist magnitude and it embodies a guarantee against arbitrariness. We cannot countenance any attempt to truncate its all embracing scope and meaning, for to do so would be to violate its activist magnitude. equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined' within traditional and doctrinaire limits. From a positivistic point of view; equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies, one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14 and if it affects any matter relating to public employment, it is also violate of Article 16. Articles 14 and 16 strike an arbitrariness in State action and ensure fairness and equality of treatment.

Now.... (as to) the requirement of Art. 14; what is the content and reach of the great equalising principle enunciated in this article ? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And therefore, it must not

> be subjected to narrow pedantic or lexicographic approach. No attempt should be made to truncate its all embracing scope and meaning for, to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits... Article 14 strikes at arbitrariness in State action and ensures equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding ominipresence. This was again reiterated by this Court in International Airport Authority's case... It must therefore now be taken to be well settled that what Article 14 strikes at is arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. The doctrine of classification which is evolved by the Courts is not paraphrase of Article 14 not is it the objective and end of that Article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached."

23. In the facts of the present case, important question is that services of the petitioners have been terminated by the respondent, whether any reason has been given in the termination order and in absence of reason whether the order of termination order becomes bad or not and whether employer - respondent has justified the termination order before this Court or not. I know that in the present case Section 25F of the Industrial Disputes Act, 1947 is not applicable and I am not considering the said Section for deciding the said matter. But the principle behind said Section 25F is important and therefore I am considering said Section 25F of the Industrial Disputes Act, 1947. In view of these questions, it is necessary to consider the relevant provisions of Section 25F of the Industrial Disputes Act which gives power to the employer to terminate services of any employee while complying with the conditions mentioned therein. This aspect has been considered by

the Labour Appellate Tribunal in case between Chopra Motors and Their Workers, reported in 1957 (II) LLJ, 162, wherein it is observed as under :

"It could not be contended that the scale of compensation as laid down in S.25F of the Industrial Disputes Act, is limited only to cases where retrenchment or termination is justified and is not applicable to cases where the retrenchment is found unjustified or uncalled. It is clear that these sections (25F to 25J) give no positive and unregulated right of retrenchment to employers. They impose the conditions precedent to the making of retrenchment. It is note-worthy that the language of S.25F is couched in a negative form. The section does not expressly provide that on the compliance with the three conditions referred to in the section, the employer shall have an unrestricted right to retrench the workmen."

24. This aspect has also been examined by the Labour Appellate Tribunal, in case between Eastern Scales, Ltd. and Their Workmen, reported in 1956 (1) LLJ 630, wherein it has been observed as under :

"As regards S. 25F their lordships observed in Para 18:

"The language of this section is significant. it is couched in a negative form. it provides that no workman who has been in continuous service for not less than one year under an employer shall be retrenched until the three conditions specified therein have been complied with. It does not say that on the compliance of the three conditions mentioned therein, the employer shall have the unrestricted and unregulated right to retrench the workmen."

"The termination of service in colourable exercise of the powers or as a result of victimisation or unfair labour practice or of caprice, should be prevented as otherwise some of the fundamental rights and principles which we have noticed above would be violated. Arbitrary conduct or unnecessary harshness on the part of the employer judged by the normal standard of a reasonable man may be cogent evidence of victimization of unfair labour practice."

"Retrenchment falls within the second category of the aforesaid three modes of termination of employment, and even in such cases it is open to an employee to question the retrenchment on the ground of want of bona fides or victimization or unfair labour practice of caprice or unecessary harshness."

25. This aspect has also been examined by the Labour Appellate Tribunal of India in the case between National Art Silk Mills, Ltd. and mills Mazdoor Sabha and others, reported in 1954 (1) LLJ 678, wherein it has been held as under :

"Section 25F gives no positive and unregulated right of retrenchment to employers, but only imposes three conditions precedent to the making of retrenchment. The section does provide that any other condition provided by any other law, local or central for the purpose of making a retrenchment, shall be dispensed with. The section must be understood to mean that over and above the conditions which may be provided in any other law, local or central, for the purpose of making retrenchment, the employer must also comply with the three conditions laid down in it. It does not say that on the compliance of three conditions mentioned therein, the employer shall have the unregulated and unrestricted right to retrench the workmen.

There is nothing in the language of 25G that any other condition of effecting a retrenchment prescribed by any other law is no longer applicable.

Whether an Act is silent upon a particular aspect of a matter and another Act makes express provision in respect of that aspect, it cannot be said that there is inconsistency between the two, unless it can be inferred by necessary implication from the provisions of the first Act that the provisions contained in the second Act were intended to be repealed. There is nothing in Ss. 25F and 25J to indicate that the provision in the Bombay Industrial Relations Act, 1946, contained in Ss.42 91), 44 and 54 for the purpose of making a retrenchment were intended to be repealed.

Sub-Section (2) of S. 25J must be

construed to mean that so far as provision has been made in the newly added section about any rights and liabilities of employers or workmen, the same shall be determined in accordance with these provisions, but where the amending Act is silent upon any particular aspect of the subject-matter of retrenchment or lay-off, if an express provision in regard to it exists in any other law in force in any State and such provision is not by necessary implication inconsistent with Act XLIII of 1953 amended Act), then the provision of the other law will determine any dispute relating to such aspect.

So an application by an employer under S.22 to effect retrenchment relying on the provisions introduced by Act XLIII of 1953 but without following the procedure laid down in Bombay Industrial Relations act, for making a retrenchment was held to be unsustainable."

26. In the case of Workmen of Subong Tea Estate, represented by the India Tea Employees Union V. Outgoing Management of Subong Tea Estate, and another, reported in AIR 1967 SUPREME COURT 420, wherein it has been held as under :

"It is not disputed that if we hold that the retrenchment ostensibly effected by Mr. Hammond is invalid because the Vendor Company represented by Mr. Hammond had ceased to be the employer, then it would follow that the retrenchment must be deemed to have been effected by the Vendee and in that case, it is clearly invalid. If is conceded that if the retrenchment is held to be effected by the Vendee, it has not complied with S. 25F or S 25G of the Act, and there can be little doubt that failure to comply with S. 25F would make the retrenchment invalid, and so would the failure to comply with S. 25G, because no reasons have been recorded by the Vendee for departing from the rule prescribed by S. 25G. In fact, we ought to add that no case has been made out for effecting any retrenchment at all, and as we have already emphasized, the employer's right to retrench his employees can be validly exercised only where it is shown that any employee has become surplus in the undertaking."

27. In the case of State of U.P. and another V. Dr. Harish Chandra Dwivedi, and another, reported din 1998 Labour Industrial Cases, 211, wherein it has been observed as under :

"Before this Court the learned Standing Counsel appearing for the petitioners contended that since the services of respondent no. 1 were terminated under the provisions of Uttar Pradesh Temporary Government Servant (Termination of Services) Rules, 1975, the need to conduct inquiry as contemplated under Article 311 (2) of the Constitution, by necessary implication got obviated. Rule 14 (a) of the said Rules provides for termination of services of temporary Government servant either with one month's notice or pay in lieu thereof and therefore it was submitted that once the services of the petitioners have been terminated by means of an order simpliciter, the Tribunal committed an error in law by quashing the termination order. In reply the contention of the learned counsel for respondent no. 1 is that even where the appointing authority purposes to act either in accordance with the terms of the employment or under the aforesaid Rules, it cannot act arbitrarily with discriminatory treatment and since the petitioner has been treated discriminatively inasmuch as officers junior to him were retained in service the termination order is violative of Article 14 of the Constitution.

Before dealing with the contention canvassed on both the sides, it will be useful to notice the relevant undisputed facts. The respondent no. 1 was appointed initially in temporary capacity. His services were terminated under the aforesaid Rules by giving one month's notice without assigning any reason. The allegation of respondent no. 1 is that the officers junior to him, were still retained and this has also been found as a fact by the Tribunal. The Tribunal has also found as a fact that the contention of the petitioners, that respondent no. 1 was found to be unsuitable, was not acceptable, as no material was available at the time of passing the impugned order, which could support petitioners' stand that respondent no. 1 was unsuitable. The adverse remarks for the year 1973-74 made against respondent no. 1,

were communicated to him much later than the date of passing of the termination order. The Tribunal has also observed that respondent no. 1 was awarded good entry by the Deputy Chief Medical Officer, Family Planning in the year 1974-75 whose remarks was endorsed by the Chief Medical Officer, Fatehpur on 18-5-1974. The Tribunal was of the view that as the petitioner till the passing of the impugned order had not been communicated any adverse remarks and he had no opportunity to make a representation against the said adverse remarks, therefore, the adverse entry had to be excluded from consideration for coming to the conclusion of unsuitability. The other ground of unsuitability of respondent no. 1, which has now been raised in the writ petition, was never raised before the Tribunal. Therefore, the petitioners cannot be permitted to raise new grounds in support of their stand or opinion of unsuitability of respondent no. 1."

28. In the case of Surendranagar District Panchayat Employees Union and Others Vs. Surendranagar District Panchayat through the Secretary and others, reported in 1988 G.L.H. (UJ) 15, wherein it has been held as under :

"The grievance of the workmen is that their services have been terminated in violation of the rule of last-come-first-go. In this behalf the extract from the final seniority list of daily-wagers working on roads in Limbdi Sub-Division is produced at Annexure 'B'. The names of petitioners Nos. 2 to 6 appear at S. Nos. 29, 30, 48, 62 and 92 of the said seniority list. We find from this list that workers at S. Nos. 93 to 96 continue on the establishment whereas the petitioners who are admittedly seniors to them are out of services. The list shows that there are several other juniors who continue on the establishment. If for want of work the Department desires to terminate the services, assuming the Department can do so in regard to daily rated workers also, the rule of last-come-first-go must be applied. It is not open to the Department to pick and choose. In the instant case, the Department has served the impugned order of termination, Annexure 'D', on a misconception that the Department is entitled to do so pursuant to the Labour Court's order of 1st October 1986. It is not contended anywhere in

> the counter that the Department has adhered to the rule of last-come-fist-go. The case of the Department is that they were entitled to terminate the services of the petitioners as per the order of the Labour Court, which, in our view, is thoroughly misconceived. In this view of the matter we think that the impugned order, Annexure 'D', which is ex-facie misconceived, cannot be allowed to stand. We are not prepared to relegate the petitioners to an industrial dispute under the provisions of the Industrial Disputes act when we find that respondent No. 3 has acted under a misconception and in an arbitrary manner in passing the impugned order Annexure 'D'.

29. In view of the observations made by the Apex Court and various High Courts and considering the factual aspects which are narrated in the petition, reply and additional affidavits, the petitioners were appointed on 4-5-1990 on the basis of 29 days' order as daily rated employees. According to the terms of the appointment orders, the petitioners' services were liable to be terminated at any time without any notice. They remained in service upto 23-11-1990. At that time, two juniors to the petitioners, one Kishanbhai H. Solanki and Karshanbhai S. Vankar those who were appointed on 4-10-1990 and on 12-11-1990 were continued in service on the same post, same condition and at the same place. Thereafter, subsequently new persons have been appointed by the respondent. K.B. Girnar, M.K. Acharya, J.R. Thaker, Parmabhai B. Patel and Haresh P. Thakkar were made permanent respectively on 19-6-1991, 11-7-1991, 11-7-1991, 16-2-1993 and 3-4-1993. Hareshkumar Natvarlal Parekh was appointed on 3-12-1990 and Bipinkumar D. Bhatt was appointed don 16-7-1991. Therefore, considering the facts that at the time of termination the junior persons to the petitioners were continued in service on the same post, same place and on the same condition and subsequent to the termination of the petitioners new persons were recruited on the same terms, at the same place and on the same post. At that time, the respondent has not called the petitioners for service. The principle of last-come first-go is not complied with by the respondents. In the termination order, no reasons have been given by the respondent. No doubt, when the termination is under challenge before this Court, the respondent remained silent about reasons for termination of the petitioners and the respondent has not justified its action of termination of the petitioners. No such averment is made in the reply filed

by the respondent. It is the duty of the respondent to justify their action of termination. In absence of reasons and justification of terminating services of the petitioners by the respondent the State Authority, the presumption must be drawn against the respondent that the action of the termination of the petitioners is arbitrary, colourable exercise of powers, victimisation, malafide, vindictive and violative of Articles 14 and 16 of the Constitution of India. Merely term has been mentioned or condition has been incorporated in the appointment order, is not giving the power to violate the fundamental rights of the petitioners while terminating their services contrary to Article 14. The action of the respondent must be justified by reasons and fair play and not capriciously.

30. The respondent is having discretion and the same is required to be exercised in accordance with the reasons and fair play and not capriciously. Bereft of rationality and fairness, discretion, degenerates into arbitrariness which is the very antithesis of the rule of law on which our democratic polity is founded. Arbitrary invocation or enforcement of a service condition terminating the service of daily rated employee may itself constitute denial of equal protection and offend the equality clause in Articles 14 and 16 (1) of the Constitution of India. It is borrowed from the archaic common law concept that employment was a matter between the master and servant only. In the first place, this rule in its original absolute form is not applicable to employees of the Government or State Authority. Secondly, with regard to private employment, much of it has passed into the fossils of time. Therefore, the respondent is not entitled to terminate the services of temporary or daily rated employees in violation of mandate of Articles 14 and 16 of the Constitution of India. It is not the case of the respondents that there was no vacancy or the post in question has been abolished or the work which was performed by the petitioners have come to an end. No such exigency has been pointed out by the respondent. It is also not the case of the respondent that the petitioners are surplus employees and therefore their services have been terminated. Therefore, considering the entire aspect of the matter which is almost undisputed and the facts which are on record and also considering the reply and rejoinder, according to my opinion, the termination orders which have been passed by the respondent which has been by Articles 14 and 16 of the Constitution of India and it is arbitrary, capricious and colourable exercise of powers and victimisation and mala fide on the part of the

respondent while passing such termination order. Whenjuniors to the petitioners were continued in service and new persons were also subequently recruited and some of them are made permanent and therefore the impugned orderd of termination are requried to be quashed and set aside.

31. Once the termination orders are required to be quashed and set aside by this Court, then the question would arise about consequential benefits and back wages for interim period. I have considered this aspect of the matter that the petition was filed in the year 1991. The respondent is a State Authority and the petitioners have completed only 6 months' service as daily rated employees and the matter has remained pending in this Court for more than 10 years for no fault of either side. Therefore, considering the entire aspect of the matter, if 50% of back wages for the interim period with all consequential benefits is granted, it will meet ends of justice. Such, situation has been considered by the Apex Court in the decision in the case of Management of M.C.D. V. Prem Chand Gupta and another, reported in AIR 2000 SC 454, wherein it has been held as under :

"The reasons for non-granting full back-wages from the date of his termination of 29-4-1966 till actual reinstatement pursuant to the present order can now be indicated. Firstly, for no fault of the contesting parties, the litigation has lingered on for more than three decades. The termination order was as early as on 29-4-1966 and after 33 years and more it is being set aside. To saddle the appellant-Corporation and its exchequer, which is meant for public benefit, with full back-wages for entire period would be too harsh to the appellant Corporation. It is the delay in disposal of cases in the Courts that has created this unfortunate situation for both the sides. Respondent workman is also not at fault as he was clamouring for justice for all these years. However, this delay in Court proceedings for no fault of either side permits us not to burden the appellant-Corporation, being a public body, with the fullback-wages for the entire period of respondent-workman's unemployment, especially when for no fault of either side actual work could not be taken from the respondent-workman by the appellant-Corporation. It is true that the respondent-workman was always willing to work but he could not be permitted to work so long as the

termination order stood against him. The Labour Court as well as the learned Single Judge upheld that order. Only the division Bench set aside that order. This Court at SLP stage itself while granting leave stayed reinstatement order on 17-11-1997. Two more years since elapsed during the pendency of this appeal before this Court. All these factors together point in the direction of not saddling the appellate-Corporation, a public body, with the burden of entire full back wages to be granted to the respondent-workman after the passage of 33 years since his order of termination. The second reason is that the respondent-workman for all these years could not have remained totally unemployed though there is no clear evidence that he was gainfully employed and was so well off that he should be denied complete back-wages. But keeping in view the fact that for all these long years fortunately the respondent-workman had survived and has still two more years to reach the age of superannuation as we are told, not granting him full back-wages on the peculiar facts of this case, would meet the ends of justice. We, therefore, following order :

1. The impugned order of the Division Bench of the High Court insofar as it holds that the termination order of the respondent-workman dated 29-4-1966 was violative of Rule 5 of the relevant Rules is set aside.

2. However, the final order passed by the High Court ordering reinstatement of the respondent - workman with continuity of service is upheld on the alternative ground holding termination of services of the respondent - workman on 29-4-1966 to be violative of Section 25F of the I.D. Act.

3. So far as back-wages are concerned the impugned order of the High Court is modified by directing that the respondent-workman will be entitled to get 50% of back-wages from the date of his termination i.e. from 29-4-1966 till his actual re-instatement in service of the appellant-Corporation with continuity of service. The respondent - workman will also be entitled to all other consequential benefits including increments in the available time-scale and revision of the time scale, if any, and also

> further service benefits as per the rules and regulations of the appellant-Corporation being treated to to have been in continuous service of the appellant-Corporation from 29-4-1966 all through out till re-instatement. The appellant-Corporation shall reinstate the respondent-workman with continuity of service within 8 weeks from today and will also pay 50% back - wages as directed hereinabove within that period. The appellant-Corporation will also grant all other consequential benefits to the respondent-workman in the light of this judgment. Appeal stands allowed as aforesaid with no order as to costs in the facts and circumstances of the case."

32. In view of the observations made by the Apex Court, the final order is required to be passed, as under:

The orders of termination passed by the respondent against the petitioners dated 23-11-1990 are hereby quashed and set aside and it is directed to the respondent to reinstate each petitioners in service with continuity of service with all consequential benefits with 50% back wages for the interim period from the date of termination of the petitioners till the date of actual reinstatement in the post. It is further directed to the respondent to reinstate the petitioners within a period of one month from the date of receipt of copy of this order and it is further directed to pay all the consequential benefits to the petitioners which have been directed by this Court including the 50% back wages for the interim period within a period of three months from the date of receipt of certified copy of this order. Accordingly, this petition is allowed. Rule is made absolute to the aforesaid extent, with no order as to costs.

Date:-11/4/2002 (H.K. Rathod, J.)

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